Supreme Court, U. S.
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80-672
No.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1980

YUN CHI FOXX,

Petitioner,

vs.

REDD FOXX,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEVADA

MARVIN M. MITCHELSON
A Professional Law Corporation
1801 Century Park East
Suite 1900
Los Angeles, California 90067
(213) 277-5545

Attorneys for Petitioner
YUN CHI FOXX

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Los Angeles, California 90067
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Attorneys for Petitioner
YUN CHI FOXX

QUESTIONS PRESENTED

1. Whether the Nevada Supreme Court's denial of YUN CHI FOXX' Petition for Writ of Prohibition or in the alternative a Writ of Mandamus, constituted a denial of Mrs. Foxx' due process rights as guaranteed her by the FIFTH Amendment of the U.S. Constitution, and by the Constitutions of the State of Nevada and the State of California.

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IN THE
SUPREME COURT
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YUN CHI FOXX,
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vs.
SUPREME COURT OF THE
STATE OF NEVADA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF THE
STATE OF NEVADA

Petitioner, YUN CHI FOXX, respectfully prays that a Writ of Certiorari issue to review the opinion and judgment of the Supreme Court of the State of Nevada entered in the above-entitled action on September 5, 1980.

OPINION BELOW

The opinion of the Supreme Court of the State of Nevada appears in Appendix "A" hereto. The Order of the Eighth Judicial District of the State of Nevada in and for the County of Clark, dated June 5, 1980, appears in Appendix "B" hereto.

JURISDICTION

This Court's jurisdiction is invoked under 28 U.S.C. §1257(3), and pursuant to the case of Mercantile National Bank vs. Langdeau, 371 U.S. 555, 557-558.

CONSTITUTIONAL PROVISIONS INVOLVED

The pertinent provisions of the FIFTH Amendment of the U.S. Constitution appear in Appendix "C" hereto.

STATEMENT

1. Petitioner, YUN CHI FOXX, hereinafter referred to as "Petitioner," is the Defendant in Redd Foxx vs. Joi Yun Chi Foxx, action No. D 16084, pending in the District Court of the State of Nevada in and for the County of Clark, Eighth Judicial District, hereinafter referred to as "Las Vegas action."

2. The Respondent herein, Redd Foxx, hereinafter referred to as Mr. Foxx, is the Plaintiff in the Las Vegas action.

4. The Las Vegas action No. D 16084, seeks a divorce from the bonds of matrimony between Petitioner and Mr. Foxx. Said action was commenced on October 22, 1979.

5. On October 30, 1979, Petitioner instituted an identical action in the Los Angeles Superior Court, Case No. D 008939, hereinafter referred to as "the Los Angeles case." Mr. Foxx was served on November 2, 1979.

6. On December 3, 1979, in the Los Angeles case, Mr. Foxx brought a Motion to Quash service of Summons, or alternatively, to Dismiss or Stay the Action. Said Motion was before Judge Christian Markey. Judge Markey stayed the California proceeding, stating:

> "For example, in this case, if we were relying on forum non conveniens, I believe quite frankly the (California) forum would have in personam jurisdiction over Mr. Foxx, without much question. But, given the fact that we have the prior adjudication -- excuse me -- the prior filing, the prior service and the prior assertion of jurisdiction, that the Nevada court may proceed. Your motion for forum non conveniens, if you have responded by then, should certainly be entertained and that court will make the determination as to those kinds of considerations.
>
> MR. MITCHELSON: And if the Nevada court should decide that

ours is a more convenient forum we'll be welcomed back here?

THE COURT: Oh, sure. All you have to do is remove the stay and it will be removed --"

7. The following facts are uncontroverted:

(a) Mr. Foxx has, for several years, been, and is currently under contract with Tandem Productions, Inc. located in Los Angeles, California.

(b) Mr. Foxx is currently living in Los Angeles, and prior to the actors' strike was shooting the new television series entitled "Sanford."

(c) Said series has been "picked up" by NBC, and shooting for this season resumed this week as the strike is over.

(d) Mr. Foxx is not currently appearing in Las Vegas, nor is he currently under contract to any work in Las Vegas.

(e) Mr. Foxx formerly owned a boutique in Las Vegas, but that boutique

has recently been closed.

(f) Mr. Foxx' main place of business is Redd Foxx Productions, located at 933 No. La Brea Avenue, Los Angeles, California and incorporated under the laws of the State of California under the title of EF-OH-EX-EX, Incorporated.

(g) One of the issues in this divorce or dissolution proceedings is the validity of a purported Ante-Nuptial Agreement. By the very terms thereof:

> "This Agreement shall be governed by and construed according to the laws of the State of California."

(h) The income tax records of both Mr. Foxx and Petitioner for the years 1976, 1977 and 1978 were prepared by Mr. Anthony Kim, a C.P.A., whose offices are located in Los Angeles, California.

(i) Mr. Foxx' present accountants are Ernst & Whinney, whose offices are located in Los Angeles, California.

(j) Mr. Foxx' bookkeeper for Redd Foxx Productions is Charlotte Isum, who lives and works in Los Angeles, California.

(k) NBC and ABC are both located in Los Angeles, California.

(l) Contracts between Redd Foxx and Tandem Productions, NBC, ABC and several other independent entertainment institutions or corporations, were entered into in Los Angeles during the time of the parties' marriage.

(m) All records, balance sheets, profit and loss statements, employee records and artist's contracts relating to Redd Foxx Productions, are located at 933 No. La Brea Avenue, Los Angeles, California.

(n) All records of rent received from tenants in the building at 933 No. La Brea Avenue, are located in that building.

(o) In addition to owning the four-story building on La Brea Avenue here-

tofore referred to, Mr. Foxx presently holds title to three other pieces of real property in the Los Angeles area, namely, a building located at 7567 Sunset Blvd., valued according to Mr. Foxx at $250,000.00; a home on Mulholland Drive valued according to Mr. Foxx at $750,000.00; and another home located in Chatsworth, California, valued according to Mr. Foxx at $800,000.00. The La Brea Avenue building, incidentally, is valued by Mr. Foxx at $900,000.00.

(p) Records from any Las Vegas appearances and records of any sales made at the Las Vegas boutique (now closed) are sent to Miss Charlotte Isum, Mr. Foxx' bookkeeper at La Brea Avenue in Los Angeles, California.

(q) Monies from those Las Vegas enterprises were deposited in Redd Foxx' California bank accounts.

(r) Redd Foxx is now, and has been, through the period of the parties" marriage, under a recording contract with Atlantic Records here in Los Angeles, California.

(s) Mr. Foxx employs some thirteen people in Los Angeles as opposed to two caretakers and one business manager in Las Vegas.

(t) All records of the Las Vegas employees employment are located at 933 No. La Brea Avenue, Los Angeles, California.

(u) Mr. Foxx' former bank accounts were located at Bank of America in Los Angeles.

(v) On or about March 15, 1980, as a condition for receiving a $200,000.00 loan, the Bank of America accounts were deactivated. Mr. Foxx opened new accounts at Manufacturers Bank in Beverly Hills, California.

(w) Prince Spencer, who "runs" Mr. Foxx' Las Vegas "Office" spends from Monday through Friday every week in Los Angeles at the La Brea office.

(x) Mr. Foxx has a California driver's license, but not a Nevada's driver's license.

(y) Mr. Foxx filed a California income tax return in 1978.

(z) Mr. Dave Turner, Mr. Foxx' general manager, works out of the La Brea Avenue office, and deals with any one who wants to contract with Mr. Foxx.

8. Petitioner has, through her attorneys, requested through Interrogatories, "the names of any and all witnesses or purported witnesses, believed or understood by you to have witnessed or to have knowledge of any of the events in issue. As to each such person, summarize what knowledge you understand each person to have." Mr. Foxx has responded to said Interrogatories as follows: "Redd Foxx, Frank Regigh, Prince Spencer, Jim Echols, Lee Ray Horning, Michael Dempsey, David Leanse, Burton Marks and Michael O'Daniels."

Mr. Foxx fails to state what knowledge each of these persons possesses and gives no indication as to their necessity as witnesses.

(a) Red Foxx -- Mr. Foxx is in Los Angeles for the resumption of shooting

for the second season of "Sanford." While shooting "Sanford," Mr. Foxx is required to be in Los Angeles at Tandem Productions five days per week. He has no business in Las Vegas, is not currently under contract there.

(b) Frank Regich -- Since Mr. Foxx' enterprises in Las Vegas are presently non-existent, Mr. Regich's duties in Las Vegas are similarly non-existent. Any records which Mr. Regich could supply in Las Vegas are just as easily obtainable in Los Angeles.

(c) Prince Spencer -- Mr. Spencer spends Monday through Friday of each week in Los Angeles, California.

(d) Jim Echols -- Mr. Echols travels with Mr. Foxx. When Mr. Foxx is in Los Angeles, there you will find Mr. Echols.

(e) Lee Rae Horning -- Ms. Horning works at Redd Foxx Productions on La Brea Avenue in Los Angeles, California, and currently resides in the Los Angeles area.

(f) Michael Dempsey -- Michael Dempsey is an attorney at law licensed to practice in the State of California. His offices are located at 261 South Figueroa Street, Los Angeles, California.

(g) David Leanse -- David Leanse was Mr. Foxx' attorney for purposes of the drafting and execution of the purported Ante-Nuptial Agreement. David Leanse is licensed to practice within the State of California. His offices are located on Pacific Coast Highway in Malibu, California.

(h) Burton Marks -- Burton Marks is an attorney at law licensed to practice within the State of California. His offices are located at 9911 West Pico Boulevard, Los Angeles, California.

(i) Michael O'Daniels -- Michael O'Daniels is the former production manager of Mr. Foxx. Mr. O'Daniels resides in Southern California.

It therefore seems apparent that each and every one of Mr. Foxx' purported witnesses, either resides in Los Angeles,

spends every weekday in Los Angeles, or maintains their law office in Southern California.

9. Petitioner's witnesses, as well, either reside in Los Angeles, or maintain their place of business here:

(a) Charlotte Isum -- Charlotte Isum resides in Los Angeles, California and works at Redd Foxx Productions in Los Angeles.

(b) David Leanse -- As already mentioned, has his law offices in Malibu, California.

(c) Tandem Productions -- Is located in Century City, California.

(d) NBC, Inc. -- Is located in Burbank, California.

(e) ABC, Inc. -- Is located in Los Angeles, California.

(f) Anthony Kim -- Mr. Foxx' former tax attorney has his offices in Los Angeles, California.

(g) Ernst & Whinney -- Mr. Foxx' present accountants, have their offices in Century City, California.

(h) Sid Lockitch -- Petitioner's present accountant has his offices in Century City, California.

(i) Chopsey Pelter -- Petitioner's present appraiser has his offices in Los Angeles, California.

(j) Finally, Petitioner herself is a resident of Chatsworth, California.

10. On May 23, 1974, in the Eighth Judicial District Court of the State of Nevada, for the County of Clark, (in a former divorce action) Mr. Foxx submitted a declaration, executed under penalty of perjury wherein he stated that he was a resident of Clark County since 1970.

On May 27, 1975, however, Mr. Foxx testified in support of his own Motion suggesting that the Nevada court lacked jurisdiction over the subject matter of that action. Mr. Foxx testified

that he was a California resident on May 6, 1974, at the time the action was filed, and has been so for two or two and a half years. He further stated that the time spent in Las Vegas was not for the purpose of establishing his home there. Based upon the oral testimony of Mr. Foxx, the Honorable Keith C. Hayes ruled as follows:

> "This court will, upon the representations of counsel and of Mr. Foxx, take no further action on the merits of this case and stand aside for the adjudication of this matter in the State of California."

11. In a deposition taken by attorneys for Petitioner on Monday, February 25, 1980, however, Mr. Foxx again states, under oath, that he considers Nevada his home since 1969 or 1970.

12. On Wednesday, June 4, 1980, attorneys for Petitioner argued not only the written Motion to Dismiss on the ground of forum non conveniens, but further argued that the matter should be dismissed on the grounds that the

District Court, lacked subject matter jurisdiction over the case.

REASONS FOR GRANTING THE WRIT

Your Petitioner asserts that the evidence demonstrates that Mr. Foxx has no substantial contacts in the State of Nevada; that he filed the Las Vegas action solely as a result of forum shopping and that he instituted that action based upon a verified complaint, stating therein that he is a Nevada resident. Mr. Foxx failed to disclose to the District Court, the existence of former statements also made under oath, whereby Mr. Foxx swears that he is not a Nevada resident. This Petition, accordingly, raises issues of paramount public importance concerning the integrity of the courts and of the judicial processes of the State of Nevada and the State of California, and the duty of trial courts to prevent unwarranted imposition of actions which have no reasonable relation to Nevada, by persons without substantial contacts with Nevada, or by persons who by omission or misstatements,

seek to use the courts of the Stace of Nevada to obtain a result which is unobtainable in the forum wherein the action should rightfully be litigated.

Furthermore, the decision of the Nevada Supreme Court is, by necessity, based upon the only two cases dealing with the forum non conveniens issue which that court has ever decided. In Buckholt vs. Second Judicial District Court, 584 Pac.2nd 672 (1978), and State Exrel. Swissco, Inc. vs. Second Judicial District Court, 385 Pac.2d 772 (1963), the Nevada Supreme Court recognized that the doctrine of forum non conveniens is grounded in a common law and has been recognized in the State of Nevada, although in both instances, the court refused to invoke the doctrine. Your Petitioner respectfully submits that that refusal in the instant case constituted an abuse of discretion and contravenes the principals as set forth by this court in Gulf Oil Corporation vs. Gilbert, 330 U.S. 501, 91 Law. Ed. 1055 (1947).

In Gulf Oil, supra, this court stated:

"The doctrine leaves much to the discretion of the court to which plaintiff resorts, and experience has not shown a judicial tendency to renounce one's own jurisdiction so strong as to result in many abuses."

Gulf Oil, supra, at page 509.

The factors to be considered, as outlined by the Gulf Oil court are as follows:

"The private interest of the litigant; the relative ease of access to the sources of proof; the availability of compulsary process for attendance of unwilling, and the cost of obtaining attendance of willing witnesses; possibility of view of the premises, if view would be appropriate to the action, and all other practical problems that make trial of the case easy, expeditious and inexpensive; questions as to the enforceability of a judgment if one is obtained;"

As is evidenced by the facts, virtually all sources of proof are located in Los Angeles. None are located in Nevada. Although your Petitioner may take numerous depositions in Los Angeles should the case ultimately be heard in Nevada, the costs of obtaining that testimony, and of transporting willing witnesses to Nevada, when virtually all witnesses for both sides reside in or work in Los Angeles, is precisely that type of expense and trouble not necessary to Mr. Foxx' right to pursue his remedy which constitutes harassment, vexaciousness and oppression warned of in Gulf Oil, supra.

All property involved in this litigation is located in Los Angeles county, California. Should appraisements of real property or businesses be necessary, and a view of the property or businesses become appropriate, the unnecessary expense of having experts travel to Los Angeles as needed, also points in favor of Los Angeles as the most convenient forum. Indeed, all practical problems that make the trial of this case easy, expeditious and inexpensive point to Los

Angeles as convenient and Nevada as inconvenient.

Furthermore, there may be problems with enforceability of a Nevada judgment if one is obtained in this case. Mr. Foxx' main place of business is Redd Foxx Productions, a California corporation. Should the Nevada judgment in any way effect your Petitioner's rights to part of that California corporation, your Petitioner would be unnecessarily harassed by the possibility of continued litigation surrounding the enforcement of that judgment. Conversely, Mr. Foxx will not be prejudiced in any way by being forced to pursue and enforce any California judgment.

The Court in Gulf Oil, supra, further stated:

> "There is an appropriateness, too, in having the trial of a diversity case in a forum that is at home with the state law that must govern the case, rather than having a court in some other forum untangle problems in conflict of laws and in law foreign

to itself."

Gulf Oil, supra, at page 511.

Your Petitioner respectfully submits, that since one of the major issues in this case will be the validity of a purported Ante-Nuptial Agreement, and because that agreement was written in California, by California attorneys, and according to its own terms, shall be governed according to the laws of the State of California, that the appropriate forum for a determination of the validity of that agreement, is California.

Finally, as is apparently from the conflicting testimony of Mr. Foxx as to his residence, Mr. Foxx has, in the instant case, as he did in his former divorce in 1975, gone forum shopping. Even though the Nevada Supreme Court had before it the testimony of Mr. Foxx thrice changed, and the factual balance so strongly in favor of your Petitioner, it chose not to invoke the doctrine of forum non conviens.

A refusal by this Court to review

the decision of the Nevada Supreme Court, would be tantamount to an affirmation of the most blatant forum shopping, and would fly in the face of this Court's decision in Gulf Oil Corporation vs. Gilbert, supra. Mr. Foxx has changed his domicile to suit his forum. He has chosen Nevada with the express intention of inconveniencing, vexing and harassing your Petitioner, by inflicting upon her expense and trouble totally unnecessary to his own right to pursue his remedy. When, during Mr. Foxx' last divorce action, he felt safer before a Los Angeles Superior Court judge, he changed his residence back to Los Angeles, and the proceedings were held there. Mr. Foxx should not now be allowed to change his residence as he changes his hat, to the detriment of your Petitioner.

CONCLUSION

For the foregoing reasons, a Writ of Certiorari should be issued to review the judgment and opinion of the Supreme Court of the State of Nevada.

Respectfully submitted,
MARVIN M. MITCHELSON,
A Professional Law Corp.

By 
MARVIN M. MITCHELSON

Attorneys for Petitioner,
YUN CHI FOXX

APPENDIX "A"

F I L E D

Sept. 5, 1980

Supreme Court of
the State of Nevada

JUDAS McCULLOCK,
Deputy Clerk

IN THE SUPREME COURT OF
THE STATE OF NEVADA

YUN CHI FOXX, Petitioner, vs. DISTRICT COURT OF THE STATE OF NEVADA FOR THE EIGHTH JUDICIAL DISTRICT, Respondent, REDD FOXX, Real Party in Interest	) NO. 12665))))))))

ORDER DENYING PETITION FOR
WRIT OF PROHIBITION

OR IN THE ALTERNATIVE, WRIT
OF MANDAMUS

Yun Chi Foxx has petitioned this court to issue a Writ of Prohibition or,

in the alternative, a Writ of Mandamus, ordering the District Court to vacate its order denying Petitioner's Motion to Dismiss. This underlying Motion was based upon the doctrine of forum non conveniens.

Since the District Court had jurisdiction over the matter and exercised its discretion in denying the Motion to Dismiss, we do not find our intervention at this time by way of extraordinary writ to be warranted. See Swisco, Inc. vs. District Court, 79 Nev. 414, 385 Pac.2d 772 (1963).

IT IS SO ORDERED

_____, C.J.
MOWBRAY

_____ J.
THOMPSON

_____ J.
GUNDERSON

_____ J.
MANOUKIAN

_____ J.
BATJER

cc: Hon. Joseph S. Pavlikowski
District Judge
Marvin M. Mitchelson, Esq.
Messrs. Galatz, Earl & Biggar
Frank Cremen, Esq.

APPENDIX "B"

F I L E D
JUN 5 11 39 AM '80
LORETTA BOWMAN CLERK
By CATHERINE TOWNSEND LEWIS

CASE NUMBER D 16084
DEPARTMENT III
DOCKET

IN THE EIGHTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK

REDD FOXX,
Plaintiff,
vs.
JOI HUNCHI FOXX,
Defendant

ORDER

This matter having come on for hearing on the 3rd day of June, 1980, the Plaintiff being represented by and through his attorney, Frank J. Cremen, and the Defendant being represented by and through her attorneys, Marvin Mitchelson of Los Angeles and Thomas Biggar, and the Court having weighed and

considered the matter,

IT IS HEREBY ORDERED that the Defendant's Motion to Dismiss the Plaintiff's Complaint on the ground of forum non conveniens is denied and that this matter will proceed to trial as scheduled on Monday, June 9, 1980 at 10:00 a.m.

DATED this 5th day of June, 1980.

DISTRICT COURT JUDGE

JOSEPH S. PAVLIKOWSKI

PREPARED BY:
FRANK J. CREMEN, ESQ.

309 South Third Street, #320
Las Vegas, Nevada 89101

APPENDIX "C"

CONSTITUTIONAL PROVISIONS

The pertinent provisions of the Fifth Amendment are:

> "No person shall . . . be deprived of life, liberty, or property, without due process of law."